

IN RE DISQUALIFICATION OF DANKOF.

THE STATE OF OHIO v. WILSON.

[Cite as *In re Disqualification of Dankof*, 168 Ohio St.3d 1224,
2022-Ohio-2855.]

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias, prejudice, or appearance of impropriety—Disqualification denied.

(No. 22-AP-077—Decided June 22, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Montgomery County Court of Common Pleas, General Division, Case Nos. 2020-CR-370 and 2020-CR-4015.

O’CONNOR, C.J.

{¶ 1} Defendant Anthony L. Wilson has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Steven K. Dankof from the above-referenced cases, one of which is now pending trial.¹

{¶ 2} Mr. Wilson alleges that Judge Dankof is biased and prejudiced against him. To support this claim, Mr. Wilson avers that one of his former court-appointed attorneys, whom Mr. Wilson describes as being “good friends” with Judge Dankof, told Mr. Wilson that the judge would deny all of Mr. Wilson’s pro se motions in

1. Mr. Wilson filed his affidavit with exhibits on June 15, 2022. On June 21, Mr. Wilson refiled the same affidavit but included fewer exhibits and additional attachments. Under S.Ct.Prac.R. 21.02(D), an affiant may file a supplemental or additional affidavit of disqualification, provided that the supplemental or additional affidavit meets the filing requirements set forth in R.C. 2701.03. Here, Mr. Wilson refiled his affidavit—with different exhibits—less than seven days before the start of his June 27 trial in Montgomery C.P. No. 2020-CR-370. Therefore, his second affidavit was not timely filed—at least with respect to case No. 2020-CR-370. *See* R.C. 2701.03(B) (requiring that an affidavit of disqualification be filed “not less than seven calendar days before the day on which the next hearing in the proceeding is scheduled”).

order to force him to enter a plea. Mr. Wilson alleges that another one of his former court-appointed attorneys warned him that his refusal to sign a jury waiver would affect Judge Dankof's bond decisions. Mr. Wilson also claims that since December 2020, he has been illegally detained while awaiting trial, even though he never signed a waiver of his speedy-trial rights, and that Judge Dankof has either improperly denied him bail or imposed excessive bail.

{¶ 3} Judge Dankof submitted a response to the affidavit and denies any bias against Mr. Wilson. Contrary to Mr. Wilson's contention, the judge says that Mr. Wilson filed a waiver of his speedy-trial rights. The judge also has thoroughly explained his bond decisions, including his revocation of Mr. Wilson's bond after he violated a no-contact order. In addition, Judge Dankof submitted affidavits from two of Mr. Wilson's former attorneys, who denied making the statements about Judge Dankof that Mr. Wilson attributed to them. One of the attorneys also denied that he was "good friends" with Judge Dankof and instead described their relationship as merely casual acquaintances.

{¶ 4} In disqualification requests, "[t]he term 'bias or prejudice' 'implies a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.' " *In re Disqualification of O'Neill*, 100 Ohio St.3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956), paragraph four of the syllabus. "The proper test for determining whether a judge's participation in a case presents an appearance of impropriety is * * * an objective one. A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge's impartiality." *In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8. In addition, a "presumption of impartiality" is accorded all judges in affidavit-of-disqualification

proceedings. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7.

{¶ 5} Mr. Wilson has not established that Judge Dankof has hostile feelings toward him or that the judge has formed a fixed anticipatory judgment on any issue in the underlying cases. Nor has Mr. Wilson set forth a compelling argument for disqualifying Judge Dankof to avoid an appearance of partiality. Mr. Wilson has failed to prove that Judge Dankof somehow attempted to coerce or pressure him into entering a plea or into waiving any of his rights. Mr. Wilson had other remedies if he disagreed with Judge Dankof's bond decisions. An affidavit of disqualification addresses the "narrow issue of the possible bias of a judge, and 'it is not a vehicle to contest matters of substantive or procedural law.'" *In re Disqualification of McGrath*, 149 Ohio St.3d 1224, 2016-Ohio-8601, 74 N.E.3d 453, ¶ 2, quoting *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4. Mr. Wilson's disagreement with the judge's bond decisions is not evidence of judicial bias, and regardless, this is not the appropriate forum in which to review Judge Dankof's legal decisions. *See In re Disqualification of Paris*, 161 Ohio St.3d 1285, 2020-Ohio-6875, 164 N.E.3d 509, ¶ 5 ("it is outside the scope of this matter to determine whether [the defendant's] speedy-trial rights have been violated"). In the end, Mr. Wilson has not established that any of Judge Dankof's actions were the product of bias against him.

{¶ 6} The affidavit of disqualification is denied. The cases may proceed before Judge Dankof.
